IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.4.2007

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA

and

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

Habeas Corpus Petition No.534 of 2007

Vimala .. Petitioner

..vs..

1.The State of Tamil Nadu
repd.by the Secretary to Government
Home Department
Fort St.George
Madras 9

2.The Superintendent of Prisons
Central Prison
Vellore

3.The Superintendent of Prisons
Central Jail
Puzhal
Madras

4.The Inspector of Police
E1 Police Station
Mylapore
Madras 4 .. Respondents

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Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Habeas Corpus to direct the respondents to produce the detenu, Mr.Thulasi, son of Dharmalinga, illegally detained by the 3rd respondent (at present) and set him at liberty.

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For petitioner : Mr.V.Raghavachari

For respondents : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

ORDER

(Order of the Court was made by P.K.MISRA,J.)

Heard Mr.V.Raghavachari, learned counsel for the petitioner and the learned Additional Public Prosecutor for the State.

2. This Habeas Corpus Petition has been filed by the wife of detenu Thulasi.

3. The allegations in the Habeas Corpus Petition indicate that the detenu was arrested on 23.5.1992 in connection with E 1, Mylapore Police Station Crime No.1183/1992 wherein it was alleged that he had committed an offence under Section 307 read with 34 I.P.C. The said crime was committed by two accused persons including the detenu. It further appears that during the pendency of the case the detenu had not been released on bail and had continued in custody. Ultimately, on 20.5.1997 the judgment in S.C.No.315/1996 was pronounced by the learned II Additional Sessions Judge, Madras. From the judgment copy it appears that the trial Court imposed a sentence of 5 years and the learned Sessions Judge also observed that the period in custody as undergone shall be set-off against the person as contemplated under Section 428 Cr.P.C. Thereafter the detenu had filed Crl.Appeal No.345 of 1998. The co-accused had filed Crl.Appeal No.174 of 1998. Even though the co-accused was apparently released on bail, the detenu had not been released on bail. Be that as it may, ultimately on 18.9.1999 the jail authorities released the detenu from jail apparently because he had undergone the sentence imposed upon him by taking into consideration the period of set off. Subsequently, both the appeals were dismissed by the High Court. Since the other appellant had not served the sentence, obviously he was required to undergo the remaining part of the sentence, whereas the detenu having undergone the sentence was not required to be re-arrested. Without, however, noticing the fact that the detenu had already undergone the sentence, a fresh warrant was issued against him pursuant to which the detenu has been kept in custody.

4. After filing of the present Habeas Corpus Petition, we have called upon the Additional Public Prosecutor to obtain necessary instructions and we have also called for the records in Crl.Appeal No.354 of 1998. On verification of the relevant records we find that there was no justification to issue a fresh warrant so far as the present detenu is concerned as by the time of dismissal of the criminal appeal, he had already undergone the period of imprisonment. It is thus obvious that the

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further detention of the detenu was on account of an erroneous warrant having been issued by the trial court.

5. In such view of the matter, the continued detention of the detenu in connection with E-1 Mylapore Police Station Crime No.1183 of 1992 corresponding to S.C.No.315 of 1996 (Crl.Appeal No.345/1998) should be considered as illegal.

6. In the result, the habeas corpus petition is allowed. The detenu is directed to be released forthwith in connection with E-1, Mylapore Police Station Cr.No.1183/92 (S.C.No.315/96 on the file of the II Additional Sessions Judge, Chennai) corresponding to (Crl.A.No.345/98 disposed of on 19.12.2005), if his presence is not required in connection with any other case. A token compensation of Rs.5,000/- shall be paid to the detenu by the respondent No.1 within a period of sixty days from the date of receipt of the order.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To
1.The Secretary to Government
Home Department
Fort St.George,Madras 9

2.The Superintendent of Prisons
Central Prison,Vellore

3.The Superintendent of Prisons
Central Jail
Puzhal
Madras

4.The Inspector of Police
E1 Police Station
Mylapore, Madras 4

5. The Joint Secretary to Government
Public Law and Order,
Fort St. George, Chennai 9.

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6. The II Additional Sessions Judge, Chennai.

7. -do- through the Principal Sessions Judge, Chennai.

8. The Public Prosecutor, High Court, Madras.

H.C.P.No.534/2007

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